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Traditional knowledge in the new climate agreement

Posted on [April 7, 2015](#) by [Annalisa Savaresi](#)



By Annalisa Savaresi

April 2015 – Scientists have increasingly recognized the role of traditional knowledge as a means to observe and assess climate alterations, and plan and implement strategies to adapt to a changing climate ([Traditional Knowledge Bulletin](#)). Yet, international climate law says nothing on the use of traditional knowledge. This state of affairs may soon change however. Parties to the UN Framework Convention on Climate Change (UNFCCC) are considering including references to the use of traditional knowledge in the new international agreement to be adopted in December 2015. This blogpost recounts how and why traditional knowledge has become a matter for consideration in international climate change law, reflecting on its implications for traditional knowledge holders and benefit-sharing.

Traditional knowledge in the climate regime

The recognition of the importance of traditional knowledge as a means to address climate change is a rather recent phenomenon. Traditional knowledge is not for example mentioned in the 1992 UNFCCC or in the 1997 Kyoto Protocol.

In 2010, however, UNFCCC Parties recognized that enhanced action on adaptation should “be based on and guided by the best available science and, as appropriate, traditional and indigenous knowledge” ([Decision 1/CP.16](#)). The [Adaptation Committee](#) (one of the subsidiary bodies established under the UNFCCC) was subsequently tasked to strengthen, consolidate and enhance the sharing of information, knowledge, experience and good practice on adaptation, “taking into account, as appropriate, traditional knowledge and practices” ([Decision 2/CP.17](#)). In addition, the [Nairobi Work Programme](#) (a mechanism established under the UNFCCC to facilitate and catalyze the development and dissemination of information and knowledge on adaptation) was asked to integrate

indigenous and traditional knowledge into its activities ([Decision 18/CP.19](#)).

In 2014 these two entities organized a [joint expert meeting](#) to consider available tools for the use of indigenous and traditional knowledge and practices for adaptation, as well as the needs of local and indigenous communities. In preparation for the meeting the UNFCCC Secretariat commissioned a [technical paper](#) and elicited [inputs](#) from the Nairobi Work Programme partners and organizations with relevant expertise, which include the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations, and the International Fund for Agricultural Development.

The technical paper recognized that policies to enhance and support the use of traditional knowledge for climate change assessment and adaptation are in their infancy, and that states have limited experience in building traditional knowledge into climate change processes. The paper recommended the adoption of guidelines to mobilize traditional knowledge and link it with scientific knowledge on adaptation in decision-making processes, emphasizing the need to recognize the role of relevant international policies and best practices. The technical paper thus suggested that UNFCCC Parties adopt guidance to address the specific uses of traditional knowledge in the context of climate change adaptation through processes that include knowledge holders, such as representatives of indigenous peoples and local communities.

Similarly, the participants of the joint-expert meeting recommended enabling the recognition, participation and engagement of local and indigenous communities and traditional knowledge holders in climate change adaptation. They also suggested the adoption of guidance for the climate regime's financial mechanism (i.e. the Global Environment Facility and the Green Climate Fund) on integrating traditional knowledge and practices into procedures for the monitoring, evaluating and reporting of adaptation, as well as soft targets for the allocation of funds for indigenous and traditional knowledge and practices. Had they been followed up, these suggestions would have broken new ground both in terms of including traditional knowledge in the scope of the climate regime's financial mechanism and in terms of including traditional knowledge holders in the elaboration of climate law and policy.

The Adaptation Committee took these recommendations on board only partially, suggesting ([FCCC/SB/2014/2](#)) that the UNFCCC Conference of the Parties (COP) might wish to:

- Invite Parties to underline the importance of indigenous and traditional knowledge and practices, in a manner commensurate with modern science, for the effective planning and implementation of adaptation, including by encouraging the integration of indigenous, traditional and local knowledge into the national adaptation plan process;
- Encourage the financial mechanism of the climate regime to enhance consideration of local, indigenous and traditional knowledge and practices and their integration into adaptation planning and practices, as well as procedures for monitoring, evaluation and reporting.

The COP eventually asked Parties, operating entities of the financial mechanism and other relevant entities working on adaptation to consider these two recommendations ([Decision](#)

[4/CP.20](#)). Nevertheless they do not impose any new obligations on UNFCCC Parties concerning the use of traditional knowledge. The guidance they provide is extremely vague and does not trace a clear course of action to better encapsulate traditional knowledge in climate change adaptation, let alone protect and reward its holders. While these developments embryonically recognize the role for traditional knowledge in the climate regime, then, they leave it up to Parties to decide whether and how to deal with the use of traditional knowledge in relation to climate change. Equally, the institutions constituting the climate regime's financial mechanism are only encouraged to consider the integration of traditional knowledge in adaptation planning and practices, rather than given an unambiguous mandate to do so.

While no further work on this specific issue is planned, the UNFCCC Secretariat has been tasked to compile good practice, tools and available data collection initiatives for the use of local, indigenous and traditional knowledge and practices for adaptation by June 2016 ([FCCC/SBSTA/2014/L.23](#)). The information will build on existing knowledge-sharing platforms, including inputs obtained in the preparation of the joint expert meeting mentioned above. This is potentially a precious opportunity to consolidate information concerning traditional knowledge already collected in existing databases, such as that on [local copying strategies](#), as well as through new enterprises such as the [Adaptation Knowledge Initiative](#) recently launched by United Nations Environment Programme and the UNFCCC Secretariat. Furthermore, more decisive developments concerning traditional knowledge may yet take place in the context of negotiations on a new climate agreement.

Traditional knowledge in negotiations on a new climate agreement

The issue of traditional knowledge also surfaced recently at negotiations on the new climate agreement to be adopted in 2015. The draft negotiating text for the new agreement discussed at the Lima Climate Change Conference in December 2014 included a text proposal concerning traditional knowledge ([Decision 1/CP.20](#)). Further references to traditional knowledge were inserted in the [negotiating text](#) formally adopted at the [Geneva Climate Change Conference](#) (so-called "Geneva text") in February 2015.

Proposals for operative provisions in the Geneva text mention traditional knowledge as one of a series of elements that form the basis for adaptation. None of the proposals addresses traditional knowledge alone, rather, traditional knowledge is listed alongside other means to adapt to climate change. Numerous references, for example, assert that action on adaptation should be "based on traditional and indigenous knowledge." Similar wording appears in the sections of the Geneva text addressing capacity building and technology, which also refer to traditional knowledge as a basis for the development of technologies.

These textual proposals recognize the role of traditional knowledge in climate change adaptation in a rather utilitarian fashion, without specifying how traditional knowledge should be used and protected. Some generic references to participatory approaches to adaptation are made, but without mention of protecting the rights of traditional knowledge holders. The only possible exception is a reference to traditional knowledge together with human rights amongst a series of elements to be taken into account in nationally determined adaptation commitments (Geneva text, 51, Option 7). Even this proposal, however, does not draw any

explicit links between the protection of human rights and traditional knowledge.

If the 2015 agreement were adopted as a protocol to the UNFCCC, these provisions would formally acknowledge the role of traditional knowledge in the climate change regime, and impose obligations on UNFCCC Parties. They would also raise a series of questions concerning their relationship with the vast body of international law that already exists concerning traditional knowledge however.

Emerging questions on traditional knowledge in the climate regime

As explained earlier in this blog, international instruments concerning [biodiversity](#), [agriculture](#) and [human rights](#) already establish obligations to protect, maintain and promote traditional knowledge. One area of crucial legal development has been that concerning the relation between the consent of indigenous peoples and fair and equitable benefit-sharing as a means to recognize, support and reward indigenous peoples and local communities for the use of their traditional knowledge in the pursuit of global public goods.

The Convention on Biological Diversity (CBD), for example, requires its Parties to respect, preserve and maintain traditional knowledge relevant for the conservation and sustainable use of biological diversity, promote its application with the approval and involvement of its holders, and encourage the sharing of benefits from its use (CBD [Article 8](#)). The Nagoya Protocol to the CBD on Access and Benefit-sharing requires its Parties to ensure that the use of traditional knowledge associated with genetic resources for research and development purposes is subject to the prior informed consent (or approval and involvement) of indigenous peoples and local communities, as well as to benefit-sharing (Nagoya Protocol Articles [5](#), [6](#) and [7](#)).

Equally, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) recognizes the right of farmers to participate equitably in the benefits arising from the utilization of plant genetic resources for food and agriculture (ITPGR [Article 9](#)). The [ITPGR Benefit-sharing Fund](#) has already supported a number of projects focusing on the management and use of plant genetic resources by indigenous peoples and traditional communities for adaptation to climate change. Negotiations are also underway in the [WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore](#) on the development of an international legal instrument for the protection of traditional cultural expressions and traditional knowledge from an intellectual property point of view.

This acknowledgement of the need to protect and incentivize traditional knowledge is not restricted to biodiversity law. Even though it makes no explicit reference to benefit-sharing, the [United Nations Declaration on the Rights of Indigenous Peoples](#) asserts the right of indigenous peoples to maintain, control, protect and develop their traditional knowledge (UNDRIP Articles 25-26) and has been interpreted as implying benefit-sharing by the UN Special Rapporteur on Indigenous Peoples' Rights ([A/HRC/15/37](#), paras. 76-77). Crucially, the [UN Convention to Combat Desertification](#) (UNCCD) requires that, subject to their respective national legislation and/or policies, Parties exchange information on local and traditional knowledge, ensuring adequate protection and providing appropriate returns from

the benefits derived to the local populations concerned, on an equitable basis and on mutually agreed terms (UNCCD Article 16). UNCCD Parties are furthermore required to support research that protects, integrates, enhances and validates traditional and local knowledge (UNCCD Article 17); and to protect, promote and use traditional and local knowledge, know-how and practices and ensure that local populations benefit directly from any commercial utilization or technological developments, on a mutually agreed and equitable basis (UNCCD Article 18).

Presently, the proposals in the Geneva text do not specify that traditional knowledge holders should receive a share of benefits from the use of traditional knowledge, or that they should consent before others can make use of such knowledge. As a result, the Geneva text is out of line with the existing body of international law on traditional knowledge. Nevertheless, UNFCCC Parties that are also parties to the above-mentioned treaties will clearly be faced with important questions concerning the interplay between these treaties. In other words: are there international obligations that would be triggered by the use of traditional knowledge in the climate context, independently of any references in a new climate agreement? And would the inclusion of specific references to human rights in the 2015 agreement also play a role in that regard?

Outlook

As explained earlier in this [blog](#), benefit-sharing in the climate regime has so far been used as a safeguard for the disbursement of climate finance, and, more specifically, as a means to compensate affected stakeholders for negative impacts associated with the implementation of climate change response measures. Only in limited instances has benefit-sharing been used as a means to reward stakeholders for contributing to climate change mitigation, as in the case of REDD+, where specific reference has also been made to traditional knowledge (see [BENELEX blogpost](#), 'The Operationalization of Benefit-sharing in REDD+').

The inclusion of references to traditional knowledge in the new climate agreement may open up a new horizon to consider benefit-sharing in the climate regime as a reward for traditional knowledge holders and a means to enhance their participation in adaptation-related decision-making. This may in turn result in the adoption of additional measures, processes and institutions in the climate regime.

While it is too early to say whether this will be the case, it seems necessary to reflect on any implicit assumptions that may underlie the discussion of traditional knowledge in the climate regime and their potential to bring the climate regime in line with developments in other areas of international law. Similarly to the recommendations of the UNFCCC COP 20, in fact, the wording included in the Geneva text seems to assume the legitimacy of the use of traditional knowledge without giving any consideration to whether and how the holders of such knowledge may have given their consent to its use. This utilitarian approach seems to be the result of a state-centric vision which disregards the complex legal questions underlying traditional knowledge – most notably, the need to protect communal ways of life in connection with nature, which develop and maintain traditional knowledge as a component of the identity, cultural and/or spiritual practices and customary rules of

indigenous peoples and local communities. In addition, no differentiation is made concerning the different types of knowledge that may be at stake (e.g. traditional knowledge associated with genetic resources vis-a-vis other forms of knowledge), which is a crucial element to identify the applicable law.

In the coming months the BENELEX project will investigate the specific legal questions emerging in connection with the use of traditional knowledge in relation to climate change and their benefit-sharing implications.

Photo courtesy: International Institute for Sustainable Development/Reporting Services

<http://www.iisd.ca/climate/adp/adp2-8/>

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